

**United States Department of Labor
Employees' Compensation Appeals Board**

ANITA F. TUCKER, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Lexington, KY, Employer**

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**Docket No. 05-1484
Issued: September 16, 2005**

Appearances:
Anita F. Tucker, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 1, 2005 appellant filed a timely appeal of an April 19, 2005 merit decision of the Office of Workers' Compensation Programs that found that the medical evidence did not demonstrate that her ulnar neuropathy was causally related to her employment, and a May 10, 2005 nonmerit decision denying reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merit and the nonmerit decisions in this case.

ISSUES

The issues are: (1) whether appellant has established that her ulnar neuropathy is causally related to her employment; and (2) whether the Office properly refused to reopen her case for further review of the merits of her claim.

FACTUAL HISTORY

On March 3, 2005 appellant, then a 57-year-old accounting technician, filed a claim for compensation for an occupational disease of ulnar nerve damage. By letter dated March 15,

2005, the Office advised appellant that it needed a detailed description of the employment activities to which she attributed her condition and a comprehensive medical report from her treating physician including the doctor's opinion, with medical reasons, on the cause of her condition.

In a March 22, 2005 statement, appellant described her duties as an accounting technician, stating that she spent about seven hours a day on the computer. She attributed her ulnar nerve damage at the elbows to resting her arms on the arms of her chair and on her desk. Appellant submitted a report of electromyography and nerve conduction studies done on February 25, 2005 by Dr. Patrick Leung, a Board-certified neurologist. He stated that the diagnostic studies showed severe bilateral ulnar neuropathies at the elbow, but no electrophysiologic evidence for generalized peripheral neuropathy, carpal tunnel syndrome, plexopathy or radiculopathy of either upper extremity.

By decision dated April 19, 2005, the Office found that the medical evidence did not demonstrate that the claimed medical condition was causally related to appellant's employment.

Appellant requested reconsideration on May 5, 2005 and submitted an April 14, 2005 report from Dr. Ewa Bak, a Board-certified internist, stating that appellant was seen that day "because of a workman's comp[ensation] injury. She has been battling problems with severe carpal tunnel syndrome/ulnar neuropathy for several months. [Appellant] does a lot of computer work through her job and knows that a lot of this could be related." Dr. Bak diagnosed bilateral severe ulnar neuropathy.

By decision dated May 10, 2005, the Office found the new evidence irrelevant and insufficient to warrant review of the April 19, 2005 decision.

LEGAL PRECEDENT -- ISSUE 1

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment. As part of this burden she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.¹

ANALYSIS -- ISSUE 1

The Board finds that the medical evidence submitted by appellant prior to the Office's April 19, 2005 decision is insufficient to meet her burden of proof. The report from Dr. Leung addressed the findings on electromyography and nerve conduction studies and diagnosed that she has bilateral ulnar neuropathy. However, Dr. Leung did not address the cause of this condition, particularly whether it is related to appellant's employment. An award of compensation may not

¹ *Froilan Negron Marrero*, 33 ECAB 796 (1982).

be based on surmise, conjecture or a claimant's belief that there is a causal relationship between a condition and factors of her federal employment.² It is appellant's burden to submit a physician's report addressing how employment factors caused or contributed to the diagnosed condition.³

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁴

ANALYSIS -- ISSUE 2

The medical report from Dr. Bak that appellant submitted with her May 5, 2005 request for reconsideration noted that appellant was seen for a workers' compensation injury, that she did a lot of computer work, and that appellant "knows that a lot of this could be related." This report, however, did not provide a reasoned medical opinion from Dr. Bak on the determinative issue of whether appellant's ulnar neuropathy is causally related to her employment. The Office thus properly found that this report did not constitute new relevant and pertinent evidence, and that it therefore was not sufficient to warrant further review of the merits of appellant's claim. Appellant did not allege that the Office erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by the Office.

² See *Calvin E. King*, 51 ECAB 394 (2000).

³ *Id.*

⁴ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

CONCLUSION

The Board finds that appellant has not established that her ulnar neuropathy is causally related to her employment. The Board further finds that the Office properly refused to reopen her case for further review of the merits of her claim.

ORDER

IT IS HEREBY ORDERED THAT the May 10 and April 19, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 16, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board